

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BOSTON SCIENTIFIC
CORPORATION, et al.,

Plaintiffs,

v.

BIOCARDIA, INC.,

Defendant.

BIOCARDIA, INC.,

Plaintiff,

v.

NVISION MEDICAL
CORPORATION, et al.,

Defendants.

Case Nos. [19-cv-05645-VC](#), [20-cv-02829-VC](#)

ORDER RE PENDING MOTIONS

Re: Dkt. Nos. 47, 48, 60, 76 (19-cv-05645-VC);

Dkt. No. 43 (20-cv-02829-VC)


For the reasons discussed at the July 16 and 23 hearings, the pending motions are resolved as follows:

- Sarna's motion to dismiss the amended counterclaims in the first lawsuit is granted as to Count I but denied as to Counts II and III. Any amended answer and counterclaims are due within 28 days of this order.
- Sarna's unopposed motion to strike portions of the amended counterclaims in the first lawsuit is granted.
- BioCardia's motion to amend its answer and counterclaims in the first lawsuit to include the additional trade secrets identified in that motion is granted. The allegations relating to these additional trade secrets may thus be included in the amended answer and counterclaims that are to be filed within 28 days.

- Leave to file an amended answer and counterclaims in the first lawsuit is limited to the two matters just discussed: bolstering the allegations regarding correction of inventorship and including allegations regarding the additional trade secrets. No additional parties, claims, or allegations may be inserted.
- EXXclaim's motion to dismiss the amended complaint in the second lawsuit is granted, with leave to amend. Any second amended complaint must be filed within 28 days of this order.
- nVision's request to dismiss the second lawsuit on claim-splitting grounds—made not by motion but in response to questions posed by the Court—very likely has merit. But in fairness, BioCardia should be given a fuller opportunity to respond on this issue. Accordingly, nVision (and EXXclaim, if it too believes dismissal on claim-splitting grounds is warranted) may raise this issue in response to the second amended complaint.
- The motion to consolidate is denied without prejudice to renewing it after the pleadings are settled (assuming the second lawsuit has not been dismissed entirely).
- Discovery in both cases is stayed until the pleadings are settled, at which point the parties should be prepared to discuss whether discovery, when it resumes, should be limited to the statute of limitations question.

IT IS SO ORDERED.

Dated: July 23, 2020



VINCE CHHABRIA
United States District Judge